



Eric McDonough <phd2b05@gmail.com>

First Amendment, Facebook and Public Records Request

Eric McDonough <phd2b05@gmail.com>

Thu, Aug 6, 2015 at 11:34 AM

To: AZ@mdpd.com

Cc: agreenstein004@hotmail.com, craig@weissberglegal.com, Gary Ostrow <Gostrow2@gmail.com>, Pro <nfiuzat@gmail.com>, "Patterson Jr, J D." <jpatterson@mdpd.com>, Carlos Miller <carlosmiller@magiccitymedia.com>, [REDACTED]

Bcc: [REDACTED]

Dear Officer Alvaro Z.,

It was a distinct pleasure speaking with you yesterday afternoon. Please do not take anything below personally as negative against you in any way, shape or form. I do not hold you accountable for the actions of your colleagues or department. I sincerely appreciate the utmost respect, openness, and honesty you showed me over the phone, I hope and pray you feel I have treated you with the same courtesy, dignity and respect, both over the phone and in this response.

A little respect goes a long way, and your polite respectful manner in my opinion models what me and others expect, no demand, from our public servants. Many of your colleagues as well as your agency and its attorneys would be well served to follow your lead. I sincerely thank you for setting such an example of good faith cooperation.

Please, If I have in anyway misconstrued, misinterpreted or misunderstood our discussion or your comments to me, feel free to correct the record. If I do not hear back from you about any inconsistencies, that will be considered as agreement with my understanding of our conversation and your comments.

It would be greatly appreciated, if as per our conversation you acknowledge receipt of this email, and the FS. 119 records request included herein at the bottom of this email. I thank you in advance.

As per our conversion and for your information/benefit and that of your superior(s), there have been at least two Federal cases supporting my contention that the actions taken by Miami-Dade Police Department (MDPD) against me on their Facebook page, was in direct violation of the First Amendment. Where the manner in which it was done without notification, without means for redress, without a time-frame of restriction and without means of appealing the decision, is a clear violation of my due process rights, and it is expected that MDPD would not knowingly allow such egregious violations to continue, once brought clearly to their attention.

These cases settled out of court after the respective departments a) restored full access, b) restored all deleted post/comments, and c) instituted clear policies preventing the departments from any further restricting of protected speech through unlawful government censorship of official social media pages/accounts, here is a link to one of them: <http://www.hawaiiifreepress.com/ArticlesMain/tabid/56/ID/12959/HPD-Ordered-to-Pay-31K-over-Censored-Facebook-Comments.aspx>

As I mentioned to you, it is really sad, deplorable, and despicable that the attorney acting on behalf of MDPD, would have such reprehensible gall as to threaten me through my attorney, with MDPD's attorney fees in my section 1983 case. I would expect the department's attorneys would at least do a little research, and at a minimum attempt to understand the First Amendment (as well as the modified British system controlling payment of attorney fees in a 1983 claim), before acting so brashly and inhumanely towards a victim of their own client's actions. Such behavior works against the likelihood that differences between the parties may be settled amicably. Such is also deplorable conduct in a civilized society, particularly by public agencies/servants who have sworn to act otherwise. Such actions are not seen to be in good faith, and work against developing close and trusting relationships between the department and the community it serves, which in my understanding is a major desire, goal, and push of Director Patterson.

No offense meant here, but based on the utter and overwhelming ignorance of the Department, its employees and its attorney(s) relative to the First Amendment in general, and social media specifically, as you personally relayed to me on the phone and further evidenced by MDPD's attorney actions, your department obviously needs outside help to come into compliance with the law.

In such a regard, I would be happy to work and cooperate, *pro bono*, politely, and in good faith with MDPD to formulate better policies regarding their social media pages/accounts, where unprotected speech such as threats, obscenity, vulgarity, etc. can be removed/censored; while simultaneously ensuring and safeguarding the rights of the citizens to make protected speech such as political speech, critical speech, and speech of public concern.

As you were plainly informed during our conversation allowing post that are in praise, while deleting/hiding post that are critical is a clear content/viewpoint based restriction upon speech and is presumptively invalid. Any type of government censorship that solely targets speech critical of government actions, without serving a compelling and legitimate government interest, while additionally failing to leave open alternative channels of communication, is invalid. There is an extremely high, almost insurmountable hurdle/burden for the County to overcome here in my case. Especially when I hold all the controlling records, which you have admitted, you don't believe your agency still possesses, which if true is a clear and admitted violation of the Sunshine law. I thank you for clearly acknowledging such in our conversation.

For the record I agree with you and the Department, that MDPD has the right to censor unprotected speech (i.e. true threats, pornography, obscenity, certain vulgarity, actual defamation, etc.) from its Facebook page. In this respect MDPD had the right to hide obscene post as you described using F- and S- bombs, but deletion is a violation of the records law unless some form of the records are kept at the agency or with the records custodian. I assume this was not done, and evidence of such will be uncovered in replying to my records request. Further, MDPD cannot renege upon its

requirements under the law by claiming that Facebook is the records custodian.

For the record, the deletion/hiding of the comments I made were not in compliance with any restrictions allowed under the First Amendment. Further, notice/warning should be given before outright blocking access of any member of the public, and an appeal process should be offered, to prevent violating rights of due process.

It is noted that MDPD cannot arbitrarily claim their Facebook page is not a public forum, as MDPD took deliberate government action to invite part or all of the public to make public speech or debate. This concept is not new to the 21st Century or social media as alleged, but is a concept fundamental to a free and democratic society, and is a concept at least as old as the Federalist Papers.

I pray for MDPD to be restored to its former glory, where it is an agency to be proud of by both its employees and those it serves, and an agency highly respected by its peers at home and abroad. However, I cannot possibly help in good faith, while MDPD is acting in bad faith, and I am under bogus and despicable threats based upon false pretenses, and a gross and incorrect misunderstanding of the law by MDPD and its attorneys.

If MDPD wants to fight an already lost battle, simultaneously in the court of law and in the court of public opinion, I will happily oblige them and we can fight, bringing more attention, interest, and enthusiasm to my cause and establishing binding court precedent in my personal role as a victim, and my side role as a civil rights activist, while moving my issues forward.

However, such does NOT serve the best interest of the County or its taxpayers and citizens, of which I too am one. It is hoped that cooler heads at MDPD will prevail. If your supervisor(s) don't want that fine, heads I win, tails they lose. It's hard to explain my positioning any clearer than that.

As the media has shown much interest in this story, Director Patterson has been included as a CC to this email, as he should well know the circumstances involved, as well as the clear violations of our sacred rights committed by his employees/agency, since liability may well fall upon him, thus affording him an opportunity in good faith to work diligently to prevent such violations from recurring in the future.

Hopefully Director Patterson will take immediate corrective actions that will help portray MDPD as an agency that honestly cares about, and upholds the rights of its citizens, and the oaths of office they have sworn themselves to. Right now the image of MDPD is tarnished, and is less than spectacular on multiple fronts.

Director Patterson can begin correcting the errors of his department in earnest by verbally in public and privately in writing, apologizing to the victims his agency has legally wronged here, and stopping his employees from making any more threats or taking any further adverse actions towards those who exercise their rights. Covering up the crimes and damage will only be seen as an aggravating factor in opposition to working on solutions in good faith with the community he serves.

Irrespective of Patterson's action/inaction, I will accurately report my findings to the media, and Director Patterson is now fully aware of these transgressions, and cannot in the future claim any ignorance or plausible deniability of such transgressions occurring under his command.

As mentioned there is an Attorney General Opinion which states that once an official government agency starts a social media site, which they are not required or obligated to do, it is subject to the Sunshine law and is a public record whose destruction is bound by the established retention schedules:

<http://www.myfloridalegal.com/ago.nsf/Opinions/25F14F90483F3901852575A2004E46CB>

It is sincerely hoped that MDPD did not violate FS. 119, the Sunshine law as well, in their unlawful actions against me and others, by knowingly and willfully deleting public records. If so it is expected that the appropriate disciplinary action will be taken against all those involved in breaking the law, harming the rights of the public, and bringing further shame and ridicule to this once great agency. Additionally, as you are well aware if such was done with a corrupt intent to provide a gain or harm to another, it would be considered legally as official misconduct, and felony destruction of records under FS. 838.022(1)(b).

It is curious that Major Llevat had just spoken with you/others about the Facebook blocking on 8/4/2015, and had just this week took unilateral action to unblock everyone from MDPD social media pages/accounts. Regardless of the highly coincidental nature of such, I will take you at your word, that at least you believed, that such actions were not in response to my Federal Lawsuit filed early last week, but was only an attempt to bring MDPD into the 21st Century, as you stated to me. If that is true, I have a lot of knowledge/expertise in this area, as a non-attorney and I will happily and freely share/cooperate, as part of my civic duty and ongoing effort to make my community and MDPD better.

I thank you for your clear acknowledgement that MDPD has blocked other citizen's access to both Facebook and other social media. In this instance I am happy that Major Llevat has decided to clean the slate by unblocking all users from all

MDPD social media pages/accounts. If this was done unprompted and unconnected to any complaints, litigation or any other suggestions, then Major Llevat is to be highly commended for this. However, to complete undoing the wrong that has been perpetrated, to the greatest extent physically possible, would require at a minimum reinstating every deleted/hidden post and/or comment. There would still however exist the irreparable harm that has already been caused, just in the unlawful government censorship(s) and prior restraint(s).

As discussed in our conversation, any unlawful pre-censorship of an idea by government is a prior restraint. Where the supreme court held in *Nebraska Press Association v. Stuart*, that a prior restraint is "the most serious and least tolerable infringement upon the First Amendment". Where blocking access to make political or critical speech on MDPD's Facebook page and deleting/hiding my comments, particularly when no unprotected speech was made on my part, and comments of praise were left untouched, is a prior restraint as well as a content based restriction upon speech, which is presumptively invalid, and the steep legal burden to prove otherwise is clearly upon the MDPD, and is in no way alleviated by making hollow threats. Further, I consider such threats to be an attempt at intimidation of or tampering with a Federal witness and victim.

Again, Director Patterson should know about these serious and egregious transgressions, and know he can have this corrected in a manner amicable to all parties, or he can take a scorched earth approach, the decision is his. However, if he desires the amicable path as do I, he should muzzle and remove the foolhardy attorney making threats against me through my attorney, and replace him with one who is willing to act in good faith, and does not threaten the victim for the exercising his rights.

For the simplest explanation for you, Director Patterson and MDPD's attorney's, of my position here please watch: <https://www.youtube.com/watch?v=WKm66IcuZyg> Such a gracious offer has an exceedingly short and fickle expiration date. If your agency continues to play games, it is at their own peril and loss, when it is known they had ample opportunity to act in good faith, but failed to seize such opportunity, instead deciding to retaliate against their victim for speaking out.

Thank you again for your time and attention, it really was refreshing speaking with a polite MDPD employee for a change. I look forward to a quick return with all documents/information responsive to my request in earliest possible time frame, and pray that your Director/Major act wisely, delicately, and expeditiously doing their best to make amends for the violations of rights, law, ethics, mission statement and oaths of office present here.

If MDPD wishes to cooperate all will be fine, if MDPD insists on fighting they will shortly be quoting Japanese Admiral Yamamoto after the attack on Pearl Harbor, and it will be known to the world.

Thank you, take care and may God bless you dear Sir.

Sincerely,

Dr. James Eric McDonough

Request formally made for records/information under FS. 119

These individual request are considered separate and severable from each other, and it is expected that MDPD will make the responsive records available immediately as each one is processed.

If there is any substantial charge over and above copying fees and CD fees, it is expected that I will be provided with an estimate of the time and cost before extensive work is done.

- 1) Copy of all comments made by me "James Eric McDonough" on the MDPD Official Facebook page between the dates of 1/1/2015 and 3/10/2015.
- 2) Copy of all Post MDPD placed on their Facebook page on 2/16/2015, and the associated comments.
- 3) Copy of the policy regarding social media and deleting/hiding comments and blocking my access that was present during 3/2015.
- 4) Copy of any new policies that have been made regarding deleting/hiding comments and blocking access to social media users.
- 5) All memos, emails, documents, communications, other records, etc. *ad infinitum* regarding MDPD's Facebook page and/or such policies.

6) All memos, emails, documents, communications, other records, etc. *ad infinitum* related to Major Llevat's Decision to unblock all users.

7) All memos, emails, documents, communications, other records, etc. *ad infinitum* relating to the decision to block my access.

8) All memos, emails, documents, communications, other records, etc. *ad infinitum* relating to the decision to delete/hide my comments.

9) All memos, emails, documents, communications, other records, etc. *ad infinitum* relating to the legal reasoning used to support the decision to delete/hide my comments and block my access.

10) The name of the person(s)/administrator(s) in control of the MDPD Facebook page; the person(s) who made the decision to delete/hide my comments and block my access; and the person(s) actually deleting/hiding my comments and/or blocking my access, including, but not limited to any involvement by the Director and all of his subordinates having in any action or effect in such decisions.

11) Copy of the full certified Facebook history of MDPD's page. This can be obtained from Facebook, and as it does not contain any exempted material, it should be released without redaction or related charges for reviewing time.